

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35581

STATE OF IDAHO,)	2009 Unpublished Opinion No. 570
)	
Plaintiff-Respondent,)	Filed: August 18, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
MARIO RIVERA, JR.,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. R. Barry Wood, District Judge.

Order denying Idaho Criminal Rule 35 motion and directing execution of original sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before PERRY, Judge; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

Mario Rivera, Jr. pled guilty to one count of robbery, Idaho Code § 18-6501 and one count of aggravated battery, Idaho Code §§ 18-903 and 18-907(b). The district court imposed a unified sentence of fifteen years with five years determinate for each charge, but after a period of retained jurisdiction, suspended the sentence and placed Rivera on probation for fifteen years. Subsequently, Rivera violated the terms of his probation, and the district court revoked probation, ordered execution of the original sentence, but suspended the sentence and again retained jurisdiction. Following the second period of retained jurisdiction, the district court relinquished jurisdiction. Rivera moved, pursuant to Idaho Criminal Rule 35 for reduction of sentence which was denied and the district court ordered execution of the original sentence

without modification. Rivera appeals, claiming that the district court abused its discretion by refusing to reduce Rivera's sentence upon relinquishing jurisdiction.

Our appellate standard of review and the factors to be considered when evaluating the reasonableness of a sentence are well established. *State v. Burdett*, 134 Idaho 271, 1 P.3d 299 (Ct. App. 2000); *State v. Sanchez*, 115 Idaho 776, 769 P.2d 1148 (Ct. App. 1989); *State v. Reinke*, 103 Idaho 771, 653 P.2d 1183 (Ct. App. 1982); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982).

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984).

Applying the forgoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion by denying Rivera's Rule 35 motion and ordering execution of his original sentence without modification. Therefore, the district court's order denying Rivera's Rule 35 motion and directing execution of his original sentence is affirmed.